

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

HERSHEY CHOCOLATE COMPANY
OF VIRGINIA, LLC

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and

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Case Nos. 05-CA-290554
 05-CA-291483

BAKERY, CONFECTIONERY, TOBACCO
WORKERSAND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO, CLC

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HERSHEY CHOCOLATE COMPANY
OF VIRGINIA, LLC

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and

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Case No. 05-RC-289101

BAKERY, CONFECTIONERY, TOBACCO
WORKERSAND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO, CLC

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**RESPONDENT’S ANSWER TO CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING**

Hershey Chocolate Company of Virginia, LLC (“Respondent”), by its undersigned counsel, and in Answer to the Consolidated Complaint and Notice of Hearing issued by the Regional Director of Region 5 of the National Labor Relations Board, states as follows:

- 1(a). Respondent admits the allegations contained in Paragraph 1(a) of the Complaint.
- 1(b). Respondent admits the allegations contained in Paragraph 1(b) of the Complaint.
- 1(c). Respondent admits the allegations contained in Paragraph 1(c) of the Complaint.
- 1(d). Respondent admits the allegations contained in Paragraph 1(d) of the Complaint.
- 2(a). Respondent admits the allegations contained in Paragraph 2(a) of the Complaint.
- 2(b). Respondent admits the allegations contained in Paragraph 2(b) of the Complaint.

2(c). Respondent admits the allegations contained in Paragraph 2(c) of the Complaint.

3. Respondent admits the allegations contained in Paragraph 3 of the Complaint.

4(a). Respondent admits that the listed persons held the positions set forth in Paragraph 4(a) of the Complaint. Further answering, Respondent states that this paragraph sets forth a legal conclusion to which no response is required; to the extent a response is deemed required, the allegations of this paragraph are otherwise denied.

4(b). Respondent denies that (b) (6), (b) (7)(C) was a 2(13) agent of the Respondent. Respondent is without sufficient knowledge or information to admit or deny whether the persons listed in (ii)-(v) of Paragraph 4(b) of the Complaint are 2(13) agents of the Respondent, and therefore denies same.

5(a). Respondent denies the allegations contained in Paragraph 5(a) of the Complaint.

5(b). Respondent denies the allegations contained in Paragraph 5(b) of the Complaint.

6(a). Respondent denies the allegations contained in Paragraph 6(a) of the Complaint.

6(b). Respondent denies the allegations contained in Paragraph 6(b) of the Complaint.

7. Respondent denies the allegations contained in Paragraph 7 of the Complaint.

8. Respondent denies the allegations contained in Paragraph 8 of the Complaint.

9. With respect to the allegations contained in Paragraph 9 of the Complaint, Respondent admits that pursuant to a process that began prior to Respondent being on notice of union organizing, flex benefits were modified in January 2022, but denies any inference that such action was unlawful.

10. Respondent denies the allegations contained in Paragraph 10 of the Complaint.

11(a). Respondent denies the allegations contained in Paragraph 11(a) of the Complaint.

11(b). Respondent denies the allegations contained in Paragraph 11(b) of the Complaint.

11(c). Respondent denies the allegations contained in Paragraph 11(c) of the Complaint.

12(a). Respondent denies the allegations contained in Paragraph 12(a) of the Complaint.

12(b). Respondent denies the allegations contained in Paragraph 12(b) of the Complaint.

13. Respondent denies the allegations contained in Paragraph 13 of the Complaint.

14. Respondent denies the allegations contained in Paragraph 14 of the Complaint.

15. Respondent denies the allegations contained in Paragraph 15 of the Complaint.

16. Respondent denies the allegations contained in Paragraph 16 of the Complaint.

17. Respondent denies the allegations contained in Paragraph 17 of the Complaint.

18. Respondent denies the allegations contained in Paragraph 18 of the Complaint.

19(a). Respondent admits the allegations contained in Paragraph 19(a) of the Complaint.

19(b). Respondent denies the allegations contained in Paragraph 19(b) of the Complaint.

20(a). Respondent admits that (b) (6), (b) (7)(C) was discharged, however, (b) (6), (b) (7)(C) was notified on (b) (6), (b) (7)(C) 2022 of (b) (6), (b) (7)(C) discharge.

20(b). Respondent denies the allegations contained in Paragraph 20(b) of the Complaint.

21. Respondent denies the allegations contained in Paragraph 21 of the Complaint.

22. Respondent denies the allegations contained in Paragraph 22 of the Complaint.

23. Respondent denies the allegations contained in Paragraph 23 of the Complaint.

Respondent denies all remaining allegations contained in the Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The adverse employment action(s) issued to (b) (6), (b) (7)(C) resulted from (b) (6), (b) (7)(C) own misconduct and invoke Section 10(c) of the Act, which provides that “[n]o order of the Board shall require the reinstatement of any individual as an employee who has been suspended

or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.”

3. The Complaint is barred by the Section 10(b) six-month statute of limitations to the extent the allegations were not the subject of a timely-filed charge.

4. The Complaint conflicts with, is contrary to, and is precluded by the free speech rights afforded Respondent under Section 8(c) of the Act and the U.S. Constitution.

5. The Complaint, in paragraphs 5-7, 10, 11 and 16, alleges unlawful conduct related to various alleged “captive-audience speeches.” Respondent acted in accordance with nearly 75 years of settled labor law by holding some employee group meetings where, among other subjects, the topic of unionization was discussed, as well as during impromptu meetings on the floor where Respondent’s supervisors spoke with employees one-on-one and the issue of unionization came up. Meetings where unionization was discussed, even if such meetings were found to be mandatory, were then and remain today, lawful under well-established Board and Supreme Court precedent. *Babcock & Wilcox*, 77 NLRB 677 (1948). Even if 75 years of settled Board precedent is overturned, which has not yet occurred, any new standard resulting from such a decision should be applied only prospectively. Further, every “captive-audience” meeting in the Complaint alleged to be unlawful occurred *prior to* the General Counsel’s April 2022 memorandum (GC Memo 22-04) seeking to overturn settled law. *Browning-Ferris Indus. Of Cal. V. NLRB*, 911 F.3d 1195, 1222 (D.C. Cir. 2018).

6. To the extent any violations are found, based on the small number of violations, their lack of severity, the limited dissemination in a unit of approximately 1,200 employees, the large size of the unit, the election’s 80/20 ratio against representation, the lack of proximity of the

conduct to the election date, and the miniscule number of unit employees affected, the violations would be *de minimis* and would not justify setting aside the election.

7. Respondent hereby gives notice that it may rely upon such other defenses that may become available, or it discovers during the course of this proceeding and, thus, Respondent reserves the right to amend its answer to assert such defenses.

WHEREFORE, having fully answered, Respondent requests that the Complaint be dismissed in its entirety.

August 3, 2023

Respectfully submitted,

/s/

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Counsel for Respondent

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that Respondent's Answer To Consolidated Complaint and Notice of Hearing was electronically filed this 3rd day of August, 2023 upon:

Sean R. Marshall, Regional Director
National Labor Relations Board, Region 5
Bank of America Center, Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

and with one copy served by U.S. Mail on this 3rd day of August, 2023 upon:

Mr. John J. Price
Director of Organization
Bakery Confectionery Tobacco Workers
& Grain Millers International Union
AFL-CIO, CLC
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Mr. Jared Cummings
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/s/
Mark J. Swerdlin